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IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 29060

Boise, March, 2004 Term
2004 Opinion No. 86
Filed: July 8, 2004
Frederick C. Lyon, Clerk

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. Monte B. Carlson, District Judge.

Affirmed in part, reversed in part, and remanded for further proceedings.

L. Clyel Berry, Chtd., Twin Falls, for appellants. L. Clyel Berry argued.

Moffatt, Thomas, Barrett, Rock & Fields, Boise, for respondent. Mark S. Prusynski argued.

In a unanimous opinion released today, the Idaho Supreme Court affirmed in part, reversed in part and remanded the case for further proceedings.

This case arises from personal injuries suffered by the defendant while acting within his employment as a result of an uninsured motorist. The defendant's employer carried uninsured motorist insurance with American Foreign Insurance Company, the plaintiff. The insurance policy authorized an offset for any worker's compensation

benefits paid or payable. The parties agreed to arbitrate the uninsured motorist claim, prior to the defendant completing his worker's compensation claim.

The parties agreed that the arbitrator was to ignore any potential worker's compensation claim and issues of subrogation. When the arbitrator released his first award, he awarded prejudgment interest on the entire damages to the defendant ignoring any rights to offset the award for worker's compensation benefits. On motion by the plaintiff the arbitrator changed the award so that the prejudgment interest would be calculated after the offset from worker's compensation was computed.

The Idaho Supreme Court held that the arbitrator had no authority under the law to modify his first award and that it was error for the district court to not confirm the first award. The Court further determined that the offset provision was valid and consistent with public policy. The insurance company therefore had the right to offset their loss by any amounts legally due the workman by workman's compensation insurance. But, the insurance company could not force the worker to complete the workers compensation claim. On remand the district court can determine whether the defendant breached the insurance contract.